Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
In Re: Delete, Delete, Delete	)	GN Docket No. 25-133

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

Russell Hanser
Loretta Polk
Steven F. Morris
Mary Beth Murphy
Pamela S. Arluk
Radhika Bhat
NCTA – The Internet & Television Association
25 Massachusetts Ave., NW
Suite 100
Washington, DC 20001

April 11, 2025

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY 1

I. THE COMMISSION SHOULD ELIMINATE OR MODIFY RULES OVERTAKEN BY MARKET AND TECHNOLOGICAL DEVELOPMENTS. 4

II. THE COMMISSION SHOULD ELIMINATE OR MODIFY RULES THAT EXCEED THE AGENCY'S STATUTORY AUTHORITY AND/OR UNDULY BURDEN TECHNOLOGICAL INNOVATION AND INFRASTRUCTURE DEPLOYMENT. 9

III. THE GOVERNMENT'S EXTENSIVE REGULATORY SCHEME FOR CABLE OPERATORS NO LONGER PASSES CONSTITUTIONAL MUSTER AND WARRANTS A WHOLESALE REEVALUATION. 14

a. The Extensive Mandatory Carriage Burdens and Restrictions on Programming Distribution Imposed on Cable Operators Can No Longer Be Squared with the First Amendment. 15

b. The Regulatory Framework Governing Cable Operators Also Raises Significant Fifth Amendment Concerns. 20

CONCLUSION 21

APPENDIX

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
In Re: Delete, Delete, Delete	)	GN Docket No. 25-133

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA)[1] submits these comments in response to the Public Notice (Notice) in the above-captioned proceeding.[2]

INTRODUCTION AND SUMMARY

NCTA agrees with the Administration that "the ever-expanding morass of complicated Federal regulation imposes massive costs on the lives of millions of Americans, creates a substantial restraint on our economic growth and ability to build and innovate, and hampers our global competitiveness."[3] And we commend the Chairman for launching this proceeding, which aims to identify and delete Federal Communications Commission (Commission or FCC) rules "for the purpose of alleviating unnecessary regulatory burdens."[4] This initiative, which aligns

[1] NCTA is the principal trade association of the cable industry in the United States, which is a leading provider of residential broadband service to U.S. households. Its members include owners and operators of cable systems serving more than 80 percent of the nation's cable television customers, as well as more than 200 video program networks and services. Cable service providers have invested more than $335 billion over the last two decades to deploy and continually upgrade networks and other infrastructure – including building some of the nation's largest Wi-Fi networks. Several of NCTA's members also offer mobile service as Mobile Virtual Network Operators (MVNOs) via leased capacity and owned spectrum. Cable providers are the 4th and 5th largest mobile service providers in the U.S.

[2] Public Notice, *In Re: Delete, Delete, Delet*e, GN Docket No. 25-133, DA 25-219 (rel. Mar. 12, 2025) (Notice).

[3] Executive Order 14192, *Unleashing Prosperity Through Deregulation*, 90 Fed. Reg. 9065, 9065 (Feb. 6, 2025) (Executive Order 14192).

[4] Notice at 1.

with NCTA's longstanding efforts to streamline and modernize regulations applicable to our members, will help unleash a new wave of innovation, investment, and competition in the communications marketplace, benefiting consumers and fueling American competitiveness.

The attached Appendix lists specific rules that the Commission should eliminate or modify.[5] The bases for such action vary with the regulatory mandates at issue, and follow-up dockets dedicated to the rules the Commission identifies here will surely feature detailed discussion of those rationales. For present purposes, NCTA focuses on three broad categories of rules identified in the Notice that the Commission should reshape or rescind.

First, the Commission should eliminate or modify requirements that are premised on outdated facts, realities, and understandings of the marketplace and no longer make economic sense.

Second, the Commission should eliminate or modify requirements that reflect past regulatory overreach (including overbroad and incorrect readings of relevant statutes) or impede investment and innovation without corresponding public benefits.

Third, the Commission should eliminate or modify requirements grounded either in unconstitutional statutes or in unconstitutional interpretations of statutes that could be lawfully construed, and work with the Administration and Congress to advocate for the repeal of the unconstitutional statutes.

For these reasons and others, the Commission should move forward as quickly as possible to amend or simply jettison the rules set forth in the Appendix. In some cases, it might be appropriate for the Commission to eliminate cited rules via expedited processes such as those contemplated in President Trump's April 9, 2025 Presidential Memorandum Directing the

[5] *See* Appendix.

Repeal of Unlawful Regulations.[6] We recognize that some of the regulations we identify have specific statutory groundings, and we urge the Commission to work with Congress toward the repeal of those statutory provisions.[7] Whatever procedural path the Commission selects, prompt action will better conform its regulatory framework to the realities of today's marketplace and technology, remedy the excesses of the past, and align the agency's mandates with the Constitution's demands.[8]

[6] *Directing the Repeal of Unlawful Regulations*, Presidential Memorandum (Apr. 9, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/ (Memorandum). The Memorandum directs agencies, upon identifying regulations for elimination pursuant to Executive Order 14219, to "immediately take steps to effectuate the repeal of any regulation, or the portion of any regulation, that clearly exceeds the agency's statutory authority or is otherwise unlawful." *Id*. It further provides that, in those cases, the agency should revoke rules "without notice and comment, where doing so is consistent with the "good cause" exception in the Administrative Procedure Act." *Id. See also* 5 U.S.C. § 553(b) (providing that pre-rulemaking notice and comment are not required "when the agency for good cause finds … that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

[7] *See, e.g.*, 47 U.S.C. §§ 543(b)(7), (8) (requiring cable operators to include certain programming in the basic tier and to require consumers to purchase a basic tier to obtain other programming); *id.* § 543(d) (requiring cable operators to have a uniform rate structure for the provision of cable service).

[8] While NCTA fully supports the goals of the instant proceeding – the *elimination* or *relaxation* of affirmative mandates – it also urges the Commission to remain mindful of other ways in which it might pursue its overall objectives of promoting innovation and investment. For example, the Commission can and should advance these goals by establishing "shot clock" time limits on the cable franchise renewal process, *see* 47 U.S.C. § 546, similar to those it has applied in other contexts. Likewise, the Commission should scale back unnecessary and overly burdensome regulations promulgated under an expansive interpretation of Section 631, 47 U.S.C. § 551, including the agency's unduly restrictive list of legitimate business activities and its use of this provision to support adoption of mandates relating to cybersecurity and artificial intelligence. Moreover, in the pole attachment context, the Commission should quickly adopt new rules that establish timelines for the processing of large orders, to allow for sufficient time to execute self-help remedies where such measures are necessary and require pole replacement and remediation costs to be shared where the owner and an attacher (or multiple attachers) bear some responsibility for those replacement and remediation activities. Comments of NCTA – The Internet & Television Association, *Competition in the Communications Marketplace*, GN Docket No. 24-119 at 3, 15-17 (filed June 6, 2024).

I. THE COMMISSION SHOULD ELIMINATE OR MODIFY RULES OVERTAKEN BY MARKET AND TECHNOLOGICAL DEVELOPMENTS.

The first broad category of rules that the Commission should eliminate or modify includes those that were adopted in response to marketplace conditions that no longer exist.[9] In many cases, Commission rules implemented to address perceived or actual market power have remained on the books, and in some cases were expanded by prior Administrations, long after any form of market dominance has evaporated. Congress made clear its intent that such regulations be repealed,[10] and President Trump has confirmed that his Administration shares this view.[11]

There can be no doubt that the video service marketplace is vibrantly competitive and vastly different than it was decades ago. In 1992, when Congress enacted the framework governing cable operators and programming, consumers generally had just three options for watching video programming: video cassette rentals and purchases, over-the-air broadcast television, and a single multichannel video programming distributor (MVPD) – typically a cable operator authorized to serve the consumer's local area.[12] Today, telephone and DBS companies account for three of the top five traditional MVPDs.[13] Nearly all – if not all – cable operators

[9] *See* Notice at 3 ("The occurrence of marketplace and technological changes that render a rule unnecessary or inappropriate are among the most commonly-identified criteria in retrospective review standards and policies.").

[10] *See, e.g.*, 47 U.S.C. § 161 (requiring Commission to review biennially "all regulations" applicable to any provider of telecommunications service and to "repeal or modify any regulation it determines to be no longer necessary in the public interest").

[11] *See, e.g.*, Executive Order 14192; Executive Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, 90 Fed. Reg. 10583 (Feb. 25, 2025).

[12] Of the 54.3 million subscribers to MVPD service in 1991, more than 95% subscribed to cable service. *See* S. Rep. No. 102-92, at 7 (1991) (finding that cable did not face "significant competition from other multichannel video providers").

[13] AT&T/DIRECTV is third, DISH is fourth, and Verizon is fifth, based on subscribership. Data from S&P Global and NCTA analysis.

now face effective competition and are not subject to rate regulation,[14] and nearly all consumers can choose from at least three – and many from four or more – competing MVPDs.[15] Meanwhile, MVPDs' share of the video marketplace has fallen precipitously. MVPD penetration in occupied households has fallen from 87.5% in 2009 to 35.1% as of December 2024. Today, roughly 65% of households do not subscribe to any traditional MVPD service. The top eight subscription video services in the United States are delivered online: Netflix, Hulu, Disney+, Paramount+, Peacock Premium, Max/HBO Max, ESPN+, and Apple TV+.[16] The largest of these online providers have many times more subscribers than the largest traditional MVPD, and the trend continues in that direction.[17]

[14] *See Amendment to the Commission's Rules Concerning Effective Competition, Implementation of Section 111 of STELA Reauthorization Act, Report and Order*, 30 FCC Rcd. 6574 (2015) (adopting a rebuttable presumption that cable operators are subject to "competing provider" effective competition in all franchise areas); *see, e.g.*, Petition *for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI (HI0011)*, Memorandum Opinion and Order, 34 FCC Rcd. 10229 ¶ 1 (2019) (Charter Effective Competition Order) (finding that Charter is subject to effective competition in Kauai, Hawaii and in its franchise areas in Massachusetts, and finding that "in today's video marketplace consumers have a choice of multiple delivery systems to access video programming via means other than traditional cable television"); *Petition of Comcast Cable Communications, LLC, for a Determination of Effective Competition in Massachusetts Communities Listed in Appendix A; Petition of CoxCom, LLC d/b/a Cox Communications for a Determination of Effective Competition in Holland, Massachusetts (MA0321)*, Memorandum Opinion and Order, 35 FCC Rcd. 14129 (M.B. 2020) (finding Cox and Comcast subject to effective competition in franchise areas in Massachusetts).

[15] *See Communications Marketplace Report*, 2024 Communications Marketplace Report, GN Docket No. 24-119, FCC 24-136 ¶ 268 (Dec. 31, 2024) (*2024 Communications Marketplace Report*).

[16] Data from NCTA analysis of company reports and S&P Global Market Intelligence. Amazon Prime Video is also most likely in the top ten, making *eight* of the top ten subscription video services online services. Amazon does not release usage or adoption data for Prime Video, but given an estimated 180 million U.S. Amazon Prime Members, it is likely that tens of millions of households view Amazon Prime Video content.

[17] *Compare The Walt Disney Company Reports Fourth Quarter and Full Year Earnings for Fiscal 2024*, The Walt Disney Company (Nov. 14, 2024), https://thewaltdisneycompany.com/the-walt-disney-company-reports-fourth-quarter-and-full-year-earnings-for-fiscal-2024/, *with* Press Release, Comcast Corporation, *Comcast Report 4th Quarter 2024 Results*, Comcast, 3 (Jan. 30, 2025), https://www.cmcsa.com/static-files/9cd62cea-91c4-4ad7-a7dc-7eeaaa576c42.

Consumers also view video programming online through streaming services that provide linear video channels, such as YouTube TV, Sling TV, Hulu + Live TV, DirecTV Stream, and fuboTV, and consume a significant portion of their video content through YouTube's free non-linear offering and similar outlets.[18] Consumers can also access popular programs through an increasing number of other free, ad-supported services such as Pluto TV, Xumo Play, the Roku Channel, and Tubi.[19] Indeed, revenue for linear free ad-supported television (FAST) channels alone grew from close to zero in North America in 2018 to $2.6 billion in 2023, and is expected to grow at a compound annual rate of 20.5% between 2024 and 2030.[20] Moreover, generational viewership shifts are occurring as younger viewers turn to user-generated video content on social media platforms including TikTok and Instagram, in addition to YouTube, at the expense of traditional video programming formats.[21]

---

[18] *See The Gauge*, Nielsen (last visited Apr. 11, 2025), https://www.nielsen.com/data-center/the-gauge/ (*The Gauge*); *YouTube Upfront: CEO Says It's 'Redefining' TV, Platform Launches Ad Takeovers for Top 1% of Creators*, Variety (May 15, 2024), https://variety.com/2024/digital/news/youtube-upfront-2024-brandcast-1236005193/.

[19] *See The Gauge*. As of February 2025, Gracenote Video Data had a record of nearly 1,200 individual FAST channels available in the United States. *See* 2025 FAST report - Gracenote.

[20] *See* Grand View Research, *North America Free Ad-Supported Streaming TV Market Size and Outlook*, https://www.grandviewresearch.com/horizon/outlook/free-ad-supported-streaming-tv-market/north-america (last visited Apr. 11, 2025). Many programming services – including program networks carried by cable systems and other MVPDs – also offer programming directly to consumers via their own websites or apps or through platforms such as Apple, Amazon, and Roku, enabling them to reach viewers directly.

[21] *See* China Widener, et al., *2025 Digital Media Trends: Social Platforms are Becoming a Dominant Force in Media and Entertainment*, Deloitte Center for Technology, Media & Telecommunications (Mar. 25, 2025), https://www2.deloitte.com/us/en/insights/industry/technology/digital-media-trends-consumption-habits-survey/2025.html (finding that "56% of Gen Zs and 43% of millennials surveyed report that social media content is more relevant to them than traditional content like TV shows and movies" and Gen Z "respondents spend 54% more time—or about 50 minutes more—than the average consumer per day on social platforms and watching [User-generated content]; and 26% less time—or about 44 minutes less per day—than the average person watching TV and movies"); Jonathan Rothwell, *Teens Spend Average of 4.8 Hours on Social Media Per Day*, Gallup (Oct. 13, 2023), https://news.gallup.com/poll/512576/teens-spend-average-hours-social-media-per-day.aspx (finding teens spent an average of 1.9 hours per day on YouTube, 1.5 hours per day on TikTok, and 0.9 hours per day on Instagram, among other video-centric social media platforms).

Finally, vertical integration in the cable industry also continues to decline. The percentage of national cable programming networks in which cable operators have an ownership interest is currently a mere 5.8%, down from 9.1% in 2017 and dramatically less than the 52.8% reported in 1994, about the time that many of the regulations that still apply to MVPDs were first adopted.[22]

These facts should sound the death knell for legacy regulations premised on the purported market power of cable operators and programmers. There is, for example, no lawful justification for expansive must-carry rules now that any video programming provider can distribute its video content via the internet.[23] The same is true of program-carriage mandates,[24] and of rules governing how cable providers advertise services, disclose prices, and structure service tiers.[25] These and other requirements should be eliminated – not only because they are obsolete, but also because they actively distort and harm competition in today's market.

The rapid evolution of the voice marketplace likewise warrants elimination of numerous requirements designed for a long-gone era. The Commission's *2024 Communications Marketplace Report*[26] underscores that the age of legacy monopoly telephony is over. At the end of 2023, there were "approximately 20.6 million end-user switched-access lines, including approximately 8.5 million residential lines," but "approximately 64.2 million interconnected VoIP subscriptions, including approximately 24.1 million residential subscriptions."[27] There

[22] NCTA internal analysis of FCC data.

[23] *See* 47 C.F.R. §§ 76.55-76.62, 76.1601, 76.1607-76.1608, 76.1614, 76.1617.

[24] *See id.* §§ 76.1300 *et seq.*

[25] *See id.* §§ 76.946, 76.31, 76.901-76.963, 76.980.

[26] *See generally 2024 Communications Marketplace Report*.

[27] *Id.* ¶ 156.

were 865 distinct providers of fixed end-user switched-access lines, compared to 1,843 entities reporting interconnected VoIP subscribers.[28] Meanwhile, there were 386.1 million mobile subscriptions in the United States.[29] Some 76 percent of adults, and 87 percent of children, lived in wireless-only households in late 2023.[30]

As these figures likely make clear, the voice marketplace is immensely competitive. Virtually every American consumer has access to mobile voice service from at least three facilities-based mobile operators, including the "Big Three" providers (AT&T, Verizon, and T-Mobile) and the numerous regional mobile carriers. This is not to mention the many mobile virtual network services provisioned over these facilities-based carriers' networks, the VoIP and conferencing offerings accessible through customers' broadband connections, or the services offered by incumbent local exchange carriers and their successors. In recognition of these market facts, the Commission has long since eliminated virtually all regulation premised on the voice monopolies of yesteryear. In short: The wildly competitive voice market has become hypercompetitive.

In these circumstances, there is no basis for retaining rules premised on one provider's alleged competitive advantages over another, or on a consumer's purported assumption that all voice services mimic copper-based, circuit-switched "plain old telephone service." If anything, today's consumers are more familiar with competitive voice technologies, not to mention video conferencing and other multimedia options that have secured widespread adoption in the wake of the COVID-19 pandemic. There is no reason that VoIP providers should be required to provide

[28] *See id.*

[29] *Id.* ¶ 158.

[30] *Id.*

notice of power limitations on their service when the vast majority of Americans live in households dependent on battery-operated mobile devices. Nor is there good cause for maintaining stringent limits on use of customer proprietary network information (CPNI) for marketing purposes when no provider has any inherent advantage over another in accessing such information or winning market share. These and other obligations are ill-suited to the contemporary competitive landscape and should be jettisoned.

II. THE COMMISSION SHOULD ELIMINATE OR MODIFY RULES THAT EXCEED THE AGENCY'S STATUTORY AUTHORITY AND/OR UNDULY BURDEN TECHNOLOGICAL INNOVATION AND INFRASTRUCTURE DEPLOYMENT.

The second broad category of rules that the Commission should consider eliminating and/or modifying includes those that exceed the agency's statutory authority and/or impede investment and innovation without corresponding public benefits.

The Commission can only exercise the powers that Congress has given it.[31] In the old *Chevron* world, rules were adopted that extended statutory provisions beyond their scope. Many of these Commission interpretations were then upheld on review based on the now-repudiated premise that courts were required to defer to an agency's interpretation of an ambiguous statute. With the elimination of *Chevron* deference, courts reviewing agency actions must determine for themselves whether those actions reflect the *best* reading of the governing statute.[32] And while *Loper Bright* did not "call into question prior [court] cases that relied on the *Chevron* framework" to hold that "specific agency actions are lawful,"[33] it did not foreclose the ability of an agency to revisit its own prior orders and to eliminate or modify existing rules that exceed its

[31] 5 U.S.C. § 706(2)(A).

[32] *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

[33] *Id.* at 412.

statutory authority. Commission actions that reflect the best reading of that authority are most likely to pass muster on review post-*Loper Bright*.

Relatedly, some rules adopted in the past failed to account adequately for the burden they place on technological innovation and infrastructure deployment, or impose costs that far outweigh their purported benefits, given the substantial intervening changes to the marketplace discussed above.

The Appendix identifies rules that fall into each of these categories (and some rules that fall into both). For instance, the Section 628 "program access" statute is expressly limited to issues of access to cable and telco-owned, satellite-delivered programming by MVPDs. Nevertheless, in 2010, the Commission reinterpreted the reach of Section 628 to include not only *satellite delivered* cable-affiliated programming but *terrestrially delivered* programming as well.[34] The Commission's reasoning – upheld under then-controlling *Chevron* deference – was that the general prohibition of unfair methods of competition or unfair or deceptive acts or practices in Section 628(b) constituted a broad grant of antitrust-type authority over MVPDs. This interpretation has been used to transform Congress's express and limited directive into a purported license to address a range of conduct the Commission at one time or another has deemed "unfair." The Commission should reverse this unwarranted and unlawful expansion of the scope of Section 628. The Commission should likewise reconsider its determination, beginning in 2007, to use Section 628 as a source of authority to regulate the commercial

[34] 47 C.F.R. § 76.1001(b); *In re Review of the Commission's Program Access Rules & Examination of Program Tying Arrangements*, First Report and Order, 25 FCC Rcd. 746, 757-761 ¶¶ 18-24 (2010).

relationship between cable operators and owners of multiple dwelling units, which also was upheld only under *Chevron* and despite not being the best reading of the statute.[35]

A more recent example of Commission overreach is the requirement that MVPDs provide an all-in price in advertising and promotional materials.[36] In the Television Viewer Protection Act of 2019 (TVPA), Congress required MVPDs to disclose the all-in price at the point of sale and in writing within 24-hours of entering a contract for service. The TVPA reflects Congress's determination that disclosure of the all-in price *at the point of sale* ensures that consumers are fully informed and do not "face unexpected and confusing fees when purchasing the video programming."[37] Moreover, Congress considered and *rejected* a proposal to require all-in pricing disclosures in advertising and other promotional materials when it enacted the TVPA.[38]

Less than five years later, however, the Commission had its own policy preference and unlawfully expanded Congress's focused mandate to include all advertising and promotional materials. The Commission took this step notwithstanding the clear record evidence that the new mandate would create confusion – not clarity – for consumers given the variations in how cable operators market and price their services. Adoption of the rule is a prime example of the Commission exceeding the bounds of the authority delegated to it by Congress and imposing

---

[35] *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, (2007), *affirmed*, *National Cable & Telecommun. Ass'n v. FCC*, 567 F.3d 659 (D.C. Cir. 2009).

[36] 47 C.F.R. § 76.310; *All-In Pricing for Cable and Satellite Television Service*, Report and Order, 39 FCC Rcd 3586 (2024).

[37] H.R. Rep. No. 116-329 at 6 (2019).

[38] *See* Television Viewer Protection Act of 2019, H.R. 5035, 116th Cong. § 4 (2019), https://www.congress.gov/bill/116th-congress/house-bill/5035/text/ih (as introduced in the House) (requiring all-in pricing in advertising) ("A provider of a covered service may not advertise the price of the covered service unless the advertised price is the total amount that the provider will charge for or relating to the provision of the covered service, including any related taxes, administrative fees, equipment rental fees, or other charges, to a consumer who accepts the offer made in the advertisement.").

requirements that are unnecessarily duplicative and disruptive in ways the people's elected representatives did not intend. As explained below, it also conflicts with the First Amendment.

The Commission has similarly overreached its statutory authority in its expansion of various Universal Service programs. As Chairman Carr has recognized,[39] the agency's ruling growing the E-Rate program to support off-premises Wi-Fi hotspots[40] was plainly inconsistent with section 254(h)(1)(B), which limits E-Rate discounts for services used in "elementary schools" and "secondary schools."[41] In allowing funding for services that can be used anywhere and by anyone, without any limits to ensure that funding is even used for educational purposes, the Commission's reach far exceeded its statutory grasp. Moreover, continuing with the 5G Fund[42] would also constitute a statutory overreach, given that funding from the Broadband Equity Access and Deployment (BEAD) program and other broadband build-out programs will enable providers to extend fiber deeper into rural areas, thereby improving the business case for the deployment of 5G wireless service. Under these circumstances, the application of Universal Service money to fund 5G is no longer efficient or consistent with section 254.

Overreach is also evident in a number of burdensome rules related to outage reporting, broadband labels, and authentication and safeguarding CPNI. These regulations impose significant burdens on providers with little or no corresponding benefit to consumers and should be eliminated or modified to limit the associated burdens. For example, the requirement that

---

[39] Dissenting Statement of Commissioner Brendan Carr, *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-76 (July 29, 2024) (*WiFi Hotspot Order*).

[40] *See WiFi Hotspot Order*; *see also* 47 C.F.R. §§ 54.500, 54.502, 54.504.

[41] 47 U.S.C. § 254(h)(1)(B).

[42] *See Establishing a 5G Fund for Rural America*, Report and Order, 35 FCC Rcd. 12174 (2020) (replacing the Mobility Fund Phase II with the new 5G Fund for Rural America) (*5G Fund Order*); *see also* 47 C.F.R. §§ 54.307(e)(5)-(7), 54.322, 54.1011-1022.

providers notify 911 and 988 special facilities of outages within 30 minutes is unduly onerous, forces providers to report inaccurate and incomplete information, and requires providers to divert resources away from restoration of services, thereby often *prolonging* the outage.[43] The Commission should eliminate the 30-minute requirement and return to the previous standard requiring providers to notify "as soon as possible." In addition, the requirement that providers use "special diligence" in gathering and maintaining PSAP contact information is both unduly burdensome (because PSAPs are in a better position to know when updates to their information are needed) and extremely ambiguous, because the Commission never defined the "special diligence" standard.[44]

Certain broadband label requirements should also be eliminated as unduly burdensome. These include the mandate that labels be provided in a machine-readable format, which imposes significant costs on providers without offering a corresponding benefit to consumers using the labels for comparison shopping.[45] The recent data breach order is another example of the Commission engaging in statutory overreach while also imposing significantly onerous rules on providers that will harm rather than help consumers. The Commission's expansion of data breach reporting to include personally identifiable information (PII) represents a misreading of section 222, which only gives the Commission authority to regulate CPNI, and imposes extensive notification burdens, which will harm consumers through overreporting and notification fatigue.[46]

---

[43] *See* 47 C.F.R. §§ 4.9(h)(1)-(4), 4.9(i)(3)-(4).

[44] *See id.* § 4.9(h)(1).

[45] *See* 47 C.F.R. § 8.2(a)(3).

[46] *See id.* §§ 64.2011, 64.5111; *see also* 47 U.S.C. § 222.

III. THE GOVERNMENT'S EXTENSIVE REGULATORY SCHEME FOR CABLE OPERATORS NO LONGER PASSES CONSTITUTIONAL MUSTER AND WARRANTS A WHOLESALE REEVALUATION.

The fundamental changes in the video marketplace described above necessitate a fresh constitutional review of the economic and speech mandates that the government imposed on the cable industry decades ago. As the Supreme Court has explained, "[t]here can be no disagreement" that "cable operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment."[47] Indeed, "[c]able television provides to its subscribers news, information, and entertainment. It is engaged in 'speech' under the First Amendment, and is, in much of its operation, part of the 'press.'"[48] Many of the laws and regulations that Congress and the Commission imposed on the cable industry – including those that require cable operators to carry certain speakers and third-party content that they would otherwise not carry; compel them to sell programming to competitors; and impose regulations on their commercial speech not applicable to their competitors – present significant constitutional concerns under the First Amendment's free speech guarantee. They also raise serious issues under the Fifth Amendment's prohibition against government takings without just compensation.

Whatever the validity of these obligations in a long-ago world where cable was the predominant provider of video programming, they can no longer withstand scrutiny under any

[47] *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636-37 (1994) (*Turner I*).

[48] *Leathers v. Medlock*, 499 U.S. 439, 444 (1991); *see also City of Los Angeles v. Preferred Commc'ns, Inc.*, 476 U.S. 488, 494 (1986) ("[C]able operators exercise 'a significant amount of editorial discretion regarding what their programming will include.'" (quoting *FCC v. Midwest Video Corp.*, 440 U.S. 689, 707 (1979))); *Cablevision Sys. Corp. v. FCC*, 597 F.3d 1306, 1322 (D.C. Cir. 2010) (Kavanaugh, J., dissenting) (noting that cable operators "are similar to publishing houses, bookstores, playhouses, movie theaters, or newsstands in the sense that they exercise editorial control in picking the content they will provide to consumers").

test in today's open and robustly competitive video marketplace. The Commission should acknowledge this new factual and legal reality, eliminate or modify these rules, and work with the Administration and Congress to advocate for the repeal of their underlying statutes.

a. The Extensive Mandatory Carriage Burdens and Restrictions on Programming Distribution Imposed on Cable Operators Can No Longer Be Squared with the First Amendment.

As discussed above, the internet has brought about a sea change in the video marketplace, including by enabling virtually anyone to create and easily disseminate video programming to a world-wide audience. Yet cable operators remain subject to a wide array of carriage requirements, going back nearly 60 years to the dawn of the cable industry, that obligate them to carry certain types of programming as part of their curated multichannel video offerings. These include must-carry,[49] public, educational, and governmental (PEG) channel obligations,[50] and leased access mandates.[51] Other provisions of law impinge on cable's discretion regarding the purchase and sale of video programming they provide to subscribers[52] or the manner in which they structure service tiers.[53] These statutorily mandated obligations amount to compelled speech that can no longer pass constitutional muster in today's marketplace.

Laws that are content-based, which include those "defining regulated speech by its function or purpose," are subject to review under the strict scrutiny test.[54] Even laws that are "facially content neutral" are nevertheless "content based" and subject to this exacting level of

---

[49] *See* 47 U.S.C. §§ 534, 535; *see also* 47 C.F.R. §§ 76.55-76.62, 76.1601, 76.1607-76.1608, 76.1614, 76.1617.

[50] *See* 47 U.S.C. § 531; *see also* 47 C.F.R. § 76.41(b)(6).

[51] *See* 47 U.S.C. § 532; *see also* 47 C.F.R. §§ 76.970-76.977, 76.701, 76.1700(a)(5), 76.1707.

[52] *See* 47 U.S.C. §§ 536, 548; *see also* 47 C.F.R. §§ 76.1000 *et seq.*, 76.1300 *et seq.*

[53] *See* 47 U.S.C. § 543(b)(7), (8).

[54] *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

review if they "cannot be justified without reference to the content of the regulated speech."[55] When evaluating whether such a speech regulation is consistent with constitutional principles, strict scrutiny requires the regulation must at least be narrowly tailored to achieve an important identifiable governmental interest unrelated to the suppression of protected speech.[56]

Laws affecting speech that are not subject to strict scrutiny are still subject to intermediate scrutiny. In general, "regulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny because . . . they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue."[57] To survive intermediate scrutiny, a content-neutral regulation must "advance[] important government interests unrelated to the suppression of free speech and . . . not burden substantially more speech than necessary to further those interests."[58]

Each of the wide array of carriage obligations imposed on cable operators fails one or both of those tests. For instance, must-carry and the related mandatory basic tier carriage of must-carry stations infringe on cable operators' First Amendment rights as speakers and editors of content by requiring cable operators to carry programming that they would otherwise not choose to carry absent the government mandate to provide a platform for this speech. These rules also place cable operators at a competitive disadvantage with other multichannel video providers (whether or not they meet the formal definition of MVPDs) in their ability to package and price their services. Although the must-carry statute was upheld against a First Amendment

[55] *Id.* ("[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.").

[56] *Turner I*, 512 U.S. at 662.

[57] *Id.*, 522 U.S. at 642.

[58] *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997) (*Turner II*).

challenge almost three decades ago, that decision was based on a finding that in the marketplace of *that* era, cable carriage was essential to protecting the benefits of free, over-the-air local broadcast television, because cable operators possessed "bottleneck" control over the video programming delivered to any given household.[59] The marketplace has changed dramatically since that 1997 decision. Broadcasters are now merely one of numerous other sources of programming providing news and information, and consumers can choose among a nearly endless variety of such sources rather than being beholden to any single entity's editorial choices. *Over ten years ago*, the Commission itself recognized that cable operators nationwide face multichannel video competition, which has only intensified in the decade since.[60] The government's interest in preserving local broadcast television can be achieved in a plethora of other, less burdensome ways, and *no* government intervention is necessary to ensure that each household has access to a broad diversity of video programming. Yet the must-carry rules continue to impose substantial burdens on cable operators, which can no longer survive intermediate scrutiny, let alone strict scrutiny.

For similar reasons, PEG and leased access likewise cannot withstand First Amendment scrutiny in today's marketplace. Both of these regimes are content-based and speaker-based,[61]

---

[59] *Turner II*, 520 U.S. at 189; *see also id.* at 226 (citing the goals of protecting the benefits of free, over-the-air local broadcast television and promoting the widespread dissemination of information from a multiplicity of sources as the grounds for upholding must-carry).

[60] *See Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd. 6574 (2015).

[61] The PEG-channel requirement compels cable operators to transmit certain types of content – programming dealing with public, governmental or educational issues. The statute thus speaks to the content of the speech transmitted, not merely the mechanism of transmission. Leased access, by design, requires cable operators to carry programming that they would otherwise decline to carry. The express intent of leased access requirements is to override a cable operator's editorial discretion so as to affect the ultimate composition of programming provided to their subscribers. *See, e.g.*, H.R. Rep. No. 98-934, at 47 (1984) (explaining that leased access is intended to "provide the public with a true diversity of programming sources").

compelling cable operators to include content in their channel line-ups that they otherwise would not.[62] Both requirements single out "particular speech because of the topic discussed or the idea or message expressed."[63] Both are therefore subject to strict scrutiny[64] and may be justified only if the government can show that "they are narrowly tailored to serve compelling state interests."[65] Whatever governmental interest there may have been in securing capacity on cable systems for PEG and leased access programming when those requirements were initially enacted, there is no such compelling interest today given the radical transformation of the video marketplace in the ensuing decades as detailed above. Any programmer seeking to use PEG or leased access capacity can simply disseminate that programming via the internet, and to a far wider audience than is reached via the local cable operator.

Even assuming that PEG and leased access requirements should be evaluated under intermediate scrutiny, those requirements fail to pass constitutional muster because imposing even a content-neutral carriage obligation on cable operators no longer "furthers an important or substantial governmental interest." Moreover, in light of the widespread availability of

---

[62] *See, e.g.*, *Denver Area Educ. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 820 (1996) (Thomas, J., concurring in the judgment in part and dissenting in part) ("There is no getting around the fact that leased and public access are a type of forced speech."). The freedom to refrain from speaking is, of course, as protected as the freedom to speak. *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 585 U.S. 878, 973 (2018) ("When speech is compelled . . . individuals are coerced into betraying their convictions. . . . Compelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns."); *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006) ("Some of this Court's leading First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say."); *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 16 (1986) (plurality opinion) ("For corporations as for individuals, the choice to speak includes within it the choice of what not to say.").

[63] *Reed v. Town of Gilbert*, 576 U.S. at 163, 171.

[64] *Id.* at 165 ("A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech.").

[65] *Id.* at 163.

broadband internet access service, which provides for less restrictive (and often preferred) alternatives to PEG and leased channels, the need for *the government* to ensure viewpoint diversity on cable systems has substantially – if not completely – eroded.

In addition to compelled carriage requirements, other FCC rules improperly impinge on cable operators' speech. For instance, the "all-in" pricing directives, particularly those restricting cable advertising,[66] regulate the speech of cable operators, but not their online video competitors. Uneven regulations – here, concerning how providers advertise their offerings – that apply to only a subset of video providers create untenable speaker-based distinctions that are unlikely to withstand any type of First Amendment scrutiny.[67]

Separately, the program access rules, by restricting the ability of cable operators to decide the terms and conditions for the distribution of their affiliated satellite- and terrestrially-delivered programming,[68] burden the speech and association rights of both the operators and their affiliated programmers.[69] And the program carriage rules, which prohibit cable operators from exercising

---

[66] *See* 47 C.F.R. § 76.310.

[67] *See Sorrell v. IMS Health, Inc.*, 564 U.S. 552 (2011) (noting that imposition of speaker-based rules "is sufficient to justify application of heightened scrutiny"). Even if the all-in pricing rule were not subject to heightened scrutiny, the rule fails the test for compelled disclosures, *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), because it is unduly burdensome; and it fails the test for commercial speech articulated in *Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) because it is woefully underinclusive to serve its supposed substantial interest. *See, e.g.*, *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2375 (2018) (striking down a law under intermediate scrutiny where, even assuming the state interest was substantial, the proposed regulation was not sufficiently drawn to promote it because it was "wildly underinclusive" (quotation marks omitted)).

[68] *See* 47 U.S.C. § 548(b); *see also* 47 C.F.R. § 76.1000 *et seq.*

[69] *See Cablevision v. FCC*, 597 F.3d 1306, 1326 (D.C. Cir. 2010) (Kavanaugh, J., dissenting) ("Because both the video programming distributor market and video programming network market are competitive, a ban on exclusive vertical contracts does not serve the Government's interest in competition; if anything, it thwarts that interest. The FCC's exclusivity ban therefore fails the intermediate scrutiny test, and its infringement on the editorial and speech rights of cable operators and cable programmers cannot be squared with the First Amendment."). The D.C. Circuit's subsequent rejection, under intermediate scrutiny, of a First Amendment claim against the extension of the program access rules to terrestrial programming, *Cablevision v. FCC*, 649 F.3d 695 (D.C. Cir. 2011), explicitly relied on an analysis of the

their full discretion in deciding whether and how to carry unaffiliated video programmers and negotiating the terms and conditions of carriage,[70] create special privileges for government-favored speakers, burdening the speech of MVPDs that own some cable programming but not their competitors.[71] Over a decade ago, the Second Circuit observed that the Commission should "reevaluate the program carriage regime as warranted by increased competition in the video programming industry."[72] The opportunity to do so is now. The same logic applies to many other requirements impinging on cable speech.

b. The Regulatory Framework Governing Cable Operators Also Raises Significant Fifth Amendment Concerns.

The Fifth Amendment's Takings Clause prohibits the government from taking private property for public use without "just compensation."[73] The Fifth Amendment recognizes two

---

video marketplace as it existed at the time the FCC's order in question was adopted in 2010. *See id.* at 712 ("the transformation in the MVPD market, although significant, presents a 'mixed picture' when considered as a whole"). As explained above, the video marketplace has evolved considerably since 2010.

[70] *See* 47 U.S.C. § 536; *see also* 47 C.F.R. § 76.1300.

[71] That unique treatment "amounts to singling out under *Turner I* and triggers heightened scrutiny under the First Amendment." *Comcast of Maine/New Hampshire, Inc. v. Mills*, 988 F.3d 607, 617 (1st Cir. 2021) (holding that heightened scrutiny is triggered when cable operators are treated differently from their direct competitors). The intrusion on cable operator speech effected by the program carriage requirements is compounded by the fact that the Commission determines whether an MVPD has engaged in discriminatory conduct under a framework that is expressly content- and speaker-based. 47 C.F.R. § 76.1302(d)(3)(iii)(B)(*2*)(*i*) (assessing whether unaffiliated and affiliated programming are similarly situated, and thus subject to the ban on discrimination, based on such factors as "genre, ratings, license fee, target audience, target advertisers, [and] target programming"). It is further compounded by the fact that an MVPD can be exposed to liability under this regime for owning as little as a 5% interest in a video programming vendor that is deemed attributable under the broadest attribution rules in Part 76. *See* 47 C.F.R. § 76.1300(b) (removing the insulation and single majority shareholder exceptions that apply in the broadcast attribution context); *see also* 47 C.F.R. § 76.1000(b) (applying the same broad standard in the cable program access context). In today's highly competitive video programming marketplace, there is no basis for the cable programming attribution rules to be *more* restrictive than the broadcast attribution rules.

[72] *See Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 167 (2d Cir. 2013).

[73] The Takings Clause bars the "Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

types of takings. A *per se* physical taking involves the direct physical occupation or permanent appropriation of private property, regardless of "how minute the intrusion."[74] A *regulatory* taking may exist after considering (1) the economic impact of the regulation on the regulated party, (2) the extent to which the regulation has interfered with investment-backed expectations, and (3) the character of the governmental action.[75]

The constellation of regulations imposed on cable operators raises serious takings issues. Forcing cable operators to dedicate channel capacity for the uncompensated transmission of third-party content is arguably a *per se* taking.[76] Apart from carriage mandates, the significant financial and operational burdens on cable operators imposed by the Commission's restrictions on their ability to contract with building owners[77] and by the compelled sale of affiliated programming to competitors[78] raise legitimate questions about whether they constitute a regulatory taking. In today's highly competitive marketplace for video, these burdens are relatively more severe and represent a far greater economic impact on cable providers than courts have had occasion to consider in the past.

CONCLUSION

The Commission is right to focus its attention on excessively burdensome requirements that serve principally to depress investment and innovation, disserving consumer interests. At

[74] *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992) (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 434 (1982)).

[75] *Penn Cent. Transp. Co. v. N.Y.C.*, 438 U.S. 104, 124 (1978).

[76] *Cf. Loretto v. Teleprompter Manhattan CATV Corp.* (1982) (holding that a law requiring landlords to permit cable equipment to be installed constituted a per se taking). While one court has held that must-carry does not constitute a "physical occupation" of a cable system, *Cablevision Systems Corp. v. FCC*, 570 F.3d 83, 98 (2d Cir. 2009), that determination is ripe for reconsideration.

[77] *See* 47 C.F.R. § 76.2000.

[78] *See* 47 U.S.C. § 548(b); 47 C.F.R. § 76.1000 *et seq.*

best, such requirements may once have been warranted but have now outlived their usefulness. At worst, such mandates were never authorized by Congress or are flatly unconstitutional. Whatever the defect, the Commission can and should take this opportunity to correct the errors of the past.

Respectfully submitted,

/s/ Russell Hanser

Russell Hanser
Loretta Polk
Steven F. Morris
Mary Beth Murphy
Pamela S. Arluk
Radhika Bhat
NCTA – The Internet & Television Association
25 Massachusetts Ave., NW
Suite 100
Washington, DC 20001

April 11, 2025

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
76.502	Video	**State and local franchising authority review of franchise transfers.**	Modify rule to streamline local franchising authority review.	(v) Costs Outweigh the Benefits. (vi) Unjustifiably Impedes Innovation, Economic Development, etc.
76.1700(a)(6), 76.1709	Video	**Availability of Signals.** Requirement that cable system public files include a list of must-carry broadcast stations.	Eliminate.	(v) Costs Outweigh the Benefits.
76.55-76.62, 76.1601, 76.1607-76.1608, 76.1614, 76.1617	Video	**Must Carry.** Must-carry rules and notice requirements.	Streamline/modify rules that are unduly burdensome and/or do not reflect modern video marketplace.	(v) Costs Outweigh the Benefits. (vi) Unjustifiably Impedes Innovation, Economic Development, etc.
76.1700(a)(3), 76.1703	Video	**Record-Keeping for Commercials.** Requirements to (i) maintain records verifying compliance with the commercial limits in children's programming, and (ii) publish these records in each cable system's public file.	Eliminate.	(v) Costs Outweigh the Benefits.
76.2000(b)-(d)	Video, Broadband	**MTE Requirements.** Prohibitions on revenue sharing agreements and requirement to disclose exclusive marketing agreements in MTEs.	Scale back burdensome requirements adopted in the *2022 MTE Order*.	(iii) Not Best Reading of Statute. (vi) Unjustifiably Impedes Innovation, Economic Development, etc.
76.1300 *et seq*.	Video	**Program Carriage.** Program carriage rules.	Eliminate or modify rules that are unduly burdensome or that skew the marketplace.	(v) Costs Outweigh the Benefits. (vi) Unjustifiably Impedes Innovation, Economic Development, etc.
76.1200-76.1210	Video	**Navigation Devices.** Navigation device rules subject to sunset under Section 629.	Sunset rules per the statutory competitive markets/public interest test.	(v) Costs Outweigh the Benefits. (vi) Unjustifiably Impedes Innovation, Economic Development, etc.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
76.946	Video	**Cable Advertising.** Cable price advertising rule adopted in 1994.	Eliminate.	(v) Costs Outweigh the Benefits.
76.310	Video	**Cable Advertising and Billing Content.** Rule that goes beyond the Television Viewer Protection Act by (a) mandating the manner in which MVPDs disclose total service cost in advertising and promotions, and (b) applying mandates in the context of business customers.	Eliminate.	(i) Unconstitutional/Serious Constitutional Problems. (v) Costs Outweigh the Benefits.
76.970-76.977	Video	**Leased Access.** Commercial leased access rules and associated filings.	Comprehensive review to streamline and reduce burdens. (For example, the accountant report public file requirement in 76.975(b)(3) should be eliminated.)	(i) Unconstitutional/Serious Constitutional Problems. (v) Costs Outweigh the Benefits (for more targeted action).
76.901-76.963	Video	**Cable Rate Regulation.** Cable regulation rules, including mandates as to rates and tier structures.	Modify or eliminate requirements that unfairly skew the marketplace, including requirements to include certain programming in the basic tier and to require consumers to purchase a basic tier to obtain other programming.	(vi) Unjustifiably Impedes Innovation, Economic Development, etc.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
76.980	Video	**Service Change Charges.** Rule regulating charges for customer changes in service tiers and equipment.	Eliminate.	(vi) Unjustifiably Impedes Innovation, Economic Development, etc.
76.984	Video	**Geographic Rate Uniformity.** Requires cable operators to have a uniform rate structure for cable service and associated equipment throughout a franchise area.	Eliminate.	(v) Costs Outweigh the Benefits.
76.1604	Video	**Notification Regarding Service Tier Changes.** Requirement to notify subscribers in writing of certain charges for changes in service tiers.	Eliminate.	(v) Costs Outweigh the Benefits.
76.1602(b)	Video	**Cable Disclosures.** Requirement that cable operator provide detailed information, including at the time of initial installation and annually, to all subscribers.	Eliminate.	(v) Costs Outweigh the Benefits.
76.1618	Video	**Cable Disclosures.** Notice of availability of basic tier service to new subscribers at the time of initial installation.	Eliminate.	(v) Costs Outweigh the Benefits.
76.225(b)-(d)	Video	**Limits on Display of Websites in Programming.** Restrictions on the display of website addresses during children's programming.	Eliminate.	(vi) Unjustifiably Impedes Innovation, Economic Development, etc.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
76.309	Video	**Outdated Customer Service Mandates.** Cable customer service obligations.	Eliminate provisions that no longer have applicability in a modern cable system operation (*e.g.*, 76.309(c)(i)(v) – bill payment locations; 309(c)(1) (ii)-(iv) – answer calls within 30 seconds).	(v) Costs Outweigh the Benefits.
76.601	Video	**Analog Testing.** Semi-annual proof-of-performance testing for analog channels.	Eliminate.	(v) Costs Outweigh the Benefits.
76.41(b)(6)	Video	**PEG.** Cable franchise rule regarding Public, Educational, and Governmental (PEG) channels.	Eliminate.	(i) Unconstitutional/Serious Constitutional Problems.
76.1000(b); 76.1300(b)	Video	**Attribution.** Attribution rules for program access and program carriage, which capture nonvoting and insulated limited partnership and LLC equity interests as small as five percent, do not apply the single majority shareholder exception and other exceptions, and are not harmonized with the general cable cross-ownership attribution rules (76.501(f)) and the broadcast attribution rules.	Modify to harmonize with the other cable attribution rules and broadcast attribution rules.	(vi) Unjustifiably Impedes Innovation, Economic Development, etc.
76.503, 76.504	Video	**Subscriber and Channel Occupancy Limits.** Cable horizontal and channel occupancy rules.	Eliminate to reflect court decisions overturning these rules.	(vi) Unjustifiably Impedes Innovation, Economic Development, etc.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
76.1700(a)(8); 76.1715	Video	**Sponsorship ID.** Requirements to maintain in public file records on sponsorship ID.	Eliminate.	(v) Costs Outweigh the Benefits
79.101	Video	**Analog Closed Captioning.** Closed caption decoder requirements for analog television receivers.	Eliminate.	(v) Costs Outweigh the Benefits.
79.1(i)	Video	**Closed Captioning.** Closed caption contact point requirements.	Modify to eliminate inefficient and/or dated processes.	(v) Costs Outweigh the Benefits.
Part 11	Video	**EAS.** Modify EAS rules to take into account changes in technology and consumer preferences.	Modify rules that provide insufficient flexibility for EAS Participants to deliver alerts in a manner that reflects changes in technology and customer preferences. For instance, the rules should allow participants to use a software-based EAS solution.	(v) Costs Outweigh the Benefits.
11.51(g)(4)	Video	**EAS Delivery.** Allows certain EAS Participants to elect not to interrupt broadcast stations carrying news- or weather-related emergency information, based upon a written agreement.	Modify to allow EAS Participants to not interrupt cable news and weather information as well, based upon a written agreement.	(v) Costs Outweigh the Benefits.
11.15	Video	**EAS Handbook.** EAS requirement to keep physical copies of the operating handbook.	Eliminate.	(v) Costs Outweigh the Benefits.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
11.41	Video	**EAS Handbook.** Requires EAS Participants to have immediate access to the operating handbook.	Eliminate.	(v) Costs Outweigh the Benefits.
11.61(a)(2)	Video	**EAS Testing.** Required weekly tests for EAS.	Eliminate.	(v) Costs Outweigh the Benefits.
11.61(a)(3)	Video	**EAS Reporting.** Required reporting related to the Nationwide EAS Tests.	Eliminate.	(v) Costs Outweigh the Benefits.
11.35(a)	Video	**EAS Recordkeeping.** EAS operational readiness recordkeeping requirement.	Eliminate.	(v) Costs Outweigh the Benefits.
11.45(b)	Video	**EAS Reporting.** False alert reporting requirement for EAS Participants.	Eliminate.	(v) Costs Outweigh the Benefits.
11.43	Video	**EAS Election.** Rule stating that entities wishing to voluntarily participate in the national-level EAS may submit a written request to the PSHSB Chief.	Eliminate.	(v) Costs Outweigh the Benefits.
11.11(d))	Video	**EAS Code Usage.** Grants LFAs authority to use any EAS codes authorized by the FCC in franchise agreements.	Eliminate.	(v) Costs Outweigh the Benefits.
47 U.S.C. §§ 534(b)(7), 535(h).	Video	**Must Carry.** Construed to require basic tier carriage of all must carry signals even by cable systems subject to effective competition.	Eliminate basic tier carriage requirement.	(i) Unconstitutional/Serious Constitutional Concerns. (iii) Not Best Reading of Statute. (v) Costs Outweigh the Benefits.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
47 U.S.C. § 536.	Video	**Regulation of Carriage Agreements.** Content-based restrictions on purchase and sale of video programming cable operators provide to subscribers.	Re-evaluate application of statute and related rules to remedy unconstitutional compelled speech mandates.	(i) Unconstitutional/Serious Constitutional Concerns.
47 U.S.C. § 543(k)	Video	**Cable Price Survey.** Interpretation requiring cable providers to provide data in the form of a cable price survey, whose purpose (comparison of rates for regulated and unregulated cable service) is mooted by deregulation of basic cable service.	Eliminate the rule requiring FCC to publish report on the average price of basic cable service (and requiring cable providers to provide data in an annual cable price survey).	(iii) Not Best Reading of Statute. (v) Costs Outweigh the Benefits.
47 U.S.C. § 548(b)	Video	**Section 628.** Extension of Section 628(b) to matters other than disputes between cable operators and MVPDs regarding the sale of satellite-delivered cable-affiliated programming.	Scale back the expansion of 628(b) as a means for regulating MVPD services and MTE-related arrangements.	(i) Unconstitutional/Serious Constitutional Concerns. (iii) Not Best Reading of Statute.
47 U.S.C. § 572(a)	Video	**Cable-ILEC Combinations.** Interpretation banning cable-ILEC combinations.	Forbear from blanket prohibition on cable-ILEC combinations, expanding on existing FCC forbearance for cable-CLEC combinations.	(vi) Unjustifiably Impedes Innovation, Economic Development, etc.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
1.7004(d)	Broadband	**Broadband Data.** Broadband Data Collection Filing.	Modify to allow certification by qualified engineer rather than required Professional Engineering Certificate holder.	(v) Costs Outweigh the Benefits.
4.9(e)	Wireless	**MVNO Outage Reporting.** NORS outage reporting requirements.	Clarify that MVNOs are not required to report mobile outages.	(v) Costs Outweigh the Benefits.
4.9(h)(1), (4)	All Specified Services	**911 Outage Reporting.** Outage notification requirements.	Eliminate revisions to the PSAP notification requirements set to become effective April 15, 2025, and revert to prior requirements to notify PSAP of outages "as soon as possible," and use reasonable efforts to obtain PSAP contact information.	(v) Costs Outweigh the Benefits.
4.9(h)(3)	All Specified Services	**Outage Reporting.** Outage notification requirements.	Eliminate notification to PSAPs via voice call.	(v) Costs Outweigh the Benefits.
4.9(i)(3)	All Specified Services	**Outage Reporting.** Outage notification requirements.	Eliminate notification to 988 special facilities via voice call.	(v) Costs Outweigh the Benefits.
4.9(i)(4)	All Specified Services	**988 Outage Reporting.** Outage notification requirements.	Eliminate requirement to report outage impacting 988 to 988 special facilities within 30 minutes.	(v) Costs Outweigh the Benefits.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
4.18(a)(2)	Cable Communications, Wireline, Wireless, and VoIP	**DIRS Outage Reporting.** DIRS outage reporting requirements.	Eliminate requirement to provide a single final DIRS report within 24 hours of the Commission's deactivation of DIRS.	(v) Costs Outweigh the Benefits.
8.2(a)(2)	Broadband, Wireless	**Broadband Labels.** Requirement for labels to be published at the point of sale and to be provided for E-Rate and Rural Healthcare Programs.	Eliminate requirements (1) to make each customer's label accessible in online account portals, (2) to create and provide labels for E-Rate and RHC programs and streamline requirements for services marketed to business customers, and (3) to itemize government pass-through fees on labels. Clarify the rules to provide great flexibility in the ways that providers make labels available to customers, including by eliminating any mandate to provide labels in hard copy, which will enable providers to better work with consumers to give label information in the way that best meets consumers' needs.	(v) Costs Outweigh the Benefits.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
8.2(a)(3)	Broadband, Wireless	**Broadband Labels.** Requirement that labels be machine readable.	Eliminate.	(v) Costs Outweigh the Benefits.
9.11(b)(5)	VoIP	**VoIP 911 Labels.** Requirement that VoIP providers advise and receive acknowledgement from customers regarding potential 911 limitations of VoIP and provide a sticker.	Eliminate.	(v) Costs Outweigh the Benefits.
9.20	Covered Voice Offerings	**Power.** Backup power obligations.	Eliminate.	(v) Costs Outweigh the Benefits.
54.307(e)(5)-(7)	Wireless	**5G Fund.** Support eligibility rule.	Modify to eliminate 5G fund support.	(iii) Not Best Reading of Statute.
54.322	Wireless	**5G Fund.** Performance requirements rule.	Modify to eliminate 5G fund support.	(iii) Not Best Reading of Statute.
54.1011	Wireless	**5G Fund.** 5G fund support.	Eliminate.	(iii) Not Best Reading of Statute.
54.1012	Wireless	**5G Fund.** Geographic area support rules.	Modify to eliminate 5G fund support.	(iii) Not Best Reading of Statute.
54.1014	Wireless	**5G Fund.** Application rules.	Modify to eliminate 5G fund support.	(iii) Not Best Reading of Statute.
54.1015	Wireless	**5G Fund.** Public interest and performance requirements.	Modify to eliminate 5G fund support.	(iii) Not Best Reading of Statute.
54.1018	Wireless	**5G Fund.** Annual report rule.	Modify to eliminate 5G fund support.	(iii) Not Best Reading of Statute.
54.1019	Wireless	**5G Fund.** Interim service and final service milestone report rules.	Modify to eliminate 5G fund support.	(iii) Not Best Reading of Statute.
54.1022	Wireless	**5G Fund.** Cybersecurity and supply chain risk requirements in connection with 5G fund.	Modify to eliminate 5G fund support.	(iii) Not Best Reading of Statute.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
54.502(e)	Broadband, Wireless	**Wi-Fi Hotspots.** Rule designating off-premises Wi-Fi Hotspots as an eligible service.	Modify to eliminate off-premises Wi-Fi Hotspots as eligible service.	(iii) Not Best Reading of Statute.
54.500	Broadband, Wireless	**Wi-Fi Hotspots.** Definitions of Wi-Fi Hotspots.	Modify to eliminate off-premises Wi-Fi Hotspots as eligible service.	(iii) Not Best Reading of Statute.
54.504	Broadband, Wireless	**Wi-Fi Hotspots.** Definitions governing schools and libraries program (modify to delete reference to off-premises Wi-Fi hotspots).	Modify to eliminate off-premises Wi-Fi Hotspots as eligible service.	(iii) Not Best Reading of Statute.
54.504(c)	Eligible Services	**E-Rate.** Rule that allows schools and libraries to challenge rates if they believe the lowest corresponding price is too unfairly high or low.	Eliminate.	(iii) Not Best Reading of Statute. (v) Costs Outweigh the Benefits.
54.505(d)	Voice	**E-Rate.** Discounts for E-Rate voice services.	Eliminate rule initiating now-completed phase-out of voice discount.	n/a (regulation rendered irrelevant by completion of phase-out).
54.511(b)	Eligible Services	**E-Rate.** E-Rate bidding requirements.	Eliminate burdensome rules governing E-Rate-related pricing.	(iii) Not Best Reading of Statute. (v) Costs Outweigh the Benefits.
54.513(b)	Eligible Services	**E-Rate.** Rule addressing resale and transfer of services (modify to remove reference to Wi-Fi Hotspots).	Modify to eliminate Wi-Fi Hotspots as eligible service.	(iii) Not Best Reading of Statute.
54.516(e)-(g)	Eligible Services	**E-Rate.** Rule addressing asset and service inventory, acceptable use policies, and data usage reports for Wi-Fi Hotspots.	Modify to eliminate Wi-Fi Hotspots as eligible service.	(iii) Not Best Reading of Statute.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
54.623(a)(1)(x)	Eligible Services	**Rural Health Care Fund.** Requirement for funding request to include certification that consultants or third parties hired by the applicant do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services.	Eliminate.	(v) Costs Outweigh the Benefits.
54.627(c)(1)(ii)(I)	Eligible Services	**Rural Health Care Fund.** Requirement for invoicing to include certification that consultants or third parties hired by the applicant do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services.	Eliminate.	(v) Costs Outweigh the Benefits.
64.2011	Telecommunications Services and Interconnected VoIP	**CPNI.** Notification, recordkeeping, and reporting requirements related to data breaches that involve personally identifiable information (PII), rather than just CPNI.	Modify to delete the requirements involving PII, and revert to pre-revision CPNI data breach notification rules.	(iii) Not Best Reading of Statute. (v) Costs Outweigh the Benefits.
64.5111	VoIP, Wireless	**CPNI.** Notification, recordkeeping and reporting requirements related to data breaches that involve PII and CPNI for TRS providers.	Modify to delete the requirements involving PII, and revert to pre-revision CPNI data breach notification rules.	(iii) Not Best Reading of Statute. (v) Costs Outweigh the Benefits.

APPENDIX

RULES FOR ELIMINATION OR MODIFICATION

Rule Section / Statutory Provision	Affected Service(s)	Description	Requested Action	EO Category / Categories
64.2103	Covered Voice Offerings	**Rural Call Completion.** Requirement for covered providers to retain call attempt records.	Eliminate.	(v) Costs Outweigh the Benefits.
64.2107	Covered Voice Offerings	**Rural Call Completion.** Safe harbor allowing for reduced recording and retention requirements.	Eliminate.	(v) Costs Outweigh the Benefits.
64.2109	Covered Voice Offerings	**Rural Call Completion.** Safe harbor from intermediate provider service quality standards.	Eliminate.	(v) Costs Outweigh the Benefits.
64.2111	Covered Voice Offerings	**Rural Call Completion.** Requirements for covered providers with regard to Intermediate providers.	Eliminate.	(v) Costs Outweigh the Benefits.
64.2119	Covered Voice Offerings	**Rural Call Completion.** Intermediate provider service quality standards.	Eliminate.	(v) Costs Outweigh the Benefits.
64.1200(a)(10))	Broadband, Wireless, Voice, Mobile	**TCPA.** Rule governing TCPA revocation of consent.	Modify rule regarding revocation of consent to narrow what qualifies as a "reasonable" method of revoking consent and/or to provide a safe harbor.	(v) Costs Outweigh the Benefits.
1.20005	Broadband	**CALEA.** Declaratory Ruling imposing expansive unlawful cybersecurity obligations on telecommunications providers under CALEA.	Revoke interpretation.	(iii) Not Best Reading of Statute.